

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

**In re EXPEDIA HOTEL TAXES AND FEES  
LITIGATION**

CASE NO. C05-0365C

## ORDER

This matter comes before the Court on Plaintiffs' Motion to Remand (Dkt. No. 19). Plaintiffs seek to remand this case to King County Superior Court on the ground that Defendant's removal of this matter to federal court is improper. The Court has carefully reviewed the materials submitted by the parties. For the following reasons, the Court hereby **GRANTS** Plaintiffs' Motion to Remand.

In January and early February of 2005, three of the Plaintiffs separately filed class action suits against Expedia and its owner, IAC/InterActiveCorp, in King County Superior Court. Each complaint alleges that Expedia violated the Washington State Consumer Protection Act by levying tax recovery and service fees in connection with hotel reservation transactions. On February 18, 2005, a King County Superior Court judge consolidated the three cases. Also on February 18, President Bush signed the Class

1 Action Fairness Act (“CAFA”) into law. Class Action Fairness Act of 2005, Pub. L. No. 109-2 (2005).  
 2 In part, CAFA expands federal court diversity jurisdiction over class actions to address the fact that most  
 3 class actions, regardless of their nationwide scope, are currently adjudicated in state courts. S. Rep. No.  
 4 109-14, at 4 (2005). On March 7, 2005, Expedia removed the consolidated case to U.S. District Court  
 5 pursuant to CAFA. Plaintiffs now seek remand of this case to King County Superior Court.

6 The sole issue raised by Plaintiffs’ motion is the proper definition of the term “commence” as it is  
 7 used in CAFA. Under Defendant’s interpretation, the action commenced either on the date that the state  
 8 court consolidated the three original suits or on the date that Defendant removed the case. Under either  
 9 of Defendant’s interpretations, CAFA would apply because the action would have commenced on or after  
 10 the Act’s February 18 enactment date. Plaintiffs, on the other hand, argue that “commenced” means  
 11 “filed” and that this consolidated case consists of cases filed entirely before CAFA’s effective date. Since  
 12 the only ground for removal was provided by CAFA, under Plaintiffs’ interpretation, remand would be  
 13 appropriate.

14 Upon a motion to remand, “[t]he burden of establishing federal jurisdiction is on the party seeking  
 15 removal, and the removal statute is strictly construed against removal jurisdiction.” *Prize Frize, Inc. v.*  
*16 Matrix, Inc.*, 167 F.3d 1261, 1265 (9th Cir. 1999). There is a strong presumption against federal  
 17 jurisdiction, and jurisdiction must be rejected if there is any doubt as to the right of removal. *See Gaus v.*  
*18 Miles*, 980 F.2d 564, 566-67 (9th Cir. 1992). For a civil litigant to secure federal jurisdiction under  
 19 CAFA, the case must have “commenced” on or after the law’s enactment date, February 18, 2005. Class  
 20 Action Fairness Act § 9. The term “commence” is not defined in the Act. *See id.* District Courts within  
 21 the Ninth Circuit have found that “in removal cases, ‘commencement’ is governed by the law of the state  
 22 in which the action originated.” *E.g., O’Brian v. Powerforce*, 939 F. Supp. 774, 777 (D. Haw. 1996);  
*23 Perez v. Gen. Packer*, 790 F. Supp. 1464, 1469 (C.D. Cal. 1992); *Corman v. Int’l Playtex*, 713 F. Supp.  
*24* 1324, 1328 (N.D. Cal. 1989); *see Provenza v. Yamaha Motor Co.*, 295 F. Supp. 2d 1175, 1178 (D. Nev.  
*25* 2003); *Hom v. Serv. Merch. Co.*, 727 F. Supp. 1343, 1344 (N.D. Cal. 1990); *Rezendez v. Dow Corning*

1 *Co.*, 717 F. Supp. 1435, 1437 (E.D. Cal. 1989). Under Washington law, a civil action is commenced by  
 2 service of a summons or by filing a complaint. Wash. Civ. R. 3(a); *Seattle Seahawks, Inc. v. King*  
 3 *County*, 913 P.2d 375, 376 (Wash. 1996).

4 The Court finds that Defendant has failed to establish that federal jurisdiction is proper for the  
 5 following reasons. Although neither the Ninth Circuit nor the Western District of Washington has  
 6 directly defined “commence” with respect to removal or consolidation, deferring to state law to define  
 7 this word is consistent with other Ninth Circuit District Court decisions.<sup>1</sup> Under state law, the plain text  
 8 of Washington’s Civil Rule 3(a) indicates that commencement occurs with “filing.” The suits giving rise  
 9 to this consolidated action were all filed before CAFA’s enactment date. Moreover, Defendant’s reliance  
 10 on *Jeffery v. Weintraub*, 648 P.2d 914 (Wash. Ct. App. 1982), to argue that this case commenced when  
 11 the state court consolidated the original cases is misplaced. *Jeffery* only addresses consolidation’s impact  
 12 on the number of judgments and attorney’s fees. *See id.* at 921-22. In *Jeffery*, the court considered  
 13 whether the lower court could award a separate fee for each action underlying a consolidated case. *Id.*  
 14 The court’s statement that consolidation creates a new action was made in the context of finding that the  
 15 lower court’s issuance of separate judgments did not alter the fact that consolidation renders a single  
 16 judgment. *See id.* at 921. As a result, *Jeffery* is inapposite to the case at the bar. Finally, although  
 17 CAFA seeks to expand federal diversity jurisdiction, inquiry into Congress’ understanding of the term  
 18 “commence” is uninstructive because CAFA’s legislative history provides no definitive guidance.  
 19 Defendant has failed in its burden of establishing federal jurisdiction. Given the presumption against  
 20 removal, the Court finds that remand is appropriate.

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 24 <sup>1</sup>The Court also notes that Defendant fails to provide either persuasive or mandatory authority for the proposition  
 25 that the Court should follow federal law to define “commence,” and Defendant’s argument that federal law dictates that  
 26 commencement occurs upon removal relies on unpublished decisions and decisions by district courts outside the Ninth  
 Circuit.

1 For these reasons, the Court hereby GRANTS Plaintiffs' Motion to Remand and REMANDS this  
2 case to King County Superior Court without award of costs or fees.

3 SO ORDERED this 15th day of APRIL, 2005.

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6 UNITED STATES DISTRICT JUDGE